

IN THE UNITED STATE BANKRUPTCY COURT  
FOR THE NORTHERN DISTRICT OF GEORGIA  
ATLANTA DIVISION

IN RE:	)	CHAPTER 7
	)	
TIMOTHY A. BARNETT	)	CASE NO. 03-61270-MHM
	)	
Debtor	)	
	)	
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	)	
DENNIS M. CRISCI	)	
	)	
Movant	)	
	)	
v.	)	CONTESTED MATTER
	)	
TIMOTHY A. BARNETT	)	
	)	
Respondent	)	

Movant Dennis M. Crisci ("Crisci") filed a motion to extend the deadline for filing a complaint to determine the dischargeability of a debt. Debtor responded that the motion was untimely. After a hearing was held on the motion, the parties filed supplemental briefs.

**STATEMENT OF FACTS**

Debtor filed his bankruptcy petition January 27, 2003. The §341 meeting of creditors and equity security holders took place February 26, 2003. The bar date for objections to discharge and dischargeability was April 28, 2003. On April 25, 2003, Crisci filed a motion to extend the time for filing an objection to discharge under Rule 4004(b) of the Federal Rules of Bankruptcy Procedure, but that motion did not contain a request to extend the time for filing a Complaint to determine

dischargeability under Bankruptcy Rule 4007.

## **DISCUSSION**

Dischargeability of a debt is governed by 11 U.S.C. § 523. Section 523(c)(1) provides:

Except as provided in subsection (a)(3)(B) of this section, the debtor shall be discharged from a debt of a kind specified in paragraph (2), (4), (6), or (15) of subsection (a) of this section, unless, on request of the creditor to whom such debt is owed, and after notice and a hearing, the court determines such debt to be excepted from discharge under paragraph (2), (4), (6), or (15), as the case may be, of subsection (a) of this section.

If a creditor seeks determination of the dischargeability of a debt, the creditor must file an adversary proceeding within the deadline established in Bankruptcy Rule 4007. Under Bankruptcy Rule 4007,

A complaint to determine the dischargeability of any debt pursuant to § 523(c) of the Code shall be filed not later than 60 days following the first date set for the meeting of creditors held pursuant to § 341(a). . . . On motion of any party in interest, after hearing on notice, the court may for cause extend the time fixed under the subdivision. The motion shall be made before the time has expired.

If a creditor wishes to file a proceeding to deny a debtor's discharge, the creditor must file an objection to discharge under 11 U.S.C. § 727, and must file the objection within the deadline established in Bankruptcy Rule 4004. Bankruptcy Rule 4004 provides:

In a chapter 7 liquidation case a complaint objecting to the debtor's discharge under § 727(a) of the Code shall be filed not later than 60 days following the first date set for the meeting of creditors held pursuant to § 341(a). . . . On motion of any party in interest, after hearing on notice, the court may for cause extend the time fixed under the subdivision. The motion shall be made before the time has expired.

Fed. R. Bankr. Pro. 4004(a).



The court in *Noll v. Noll (In re Noll)*, 249 B.R. 568 (M.D. Fla. 2000), noted the differences between § 523 and § 727. “In contrast to § 523 of the Bankruptcy Code, § 727 acts as a total denial of discharge of any debts, which allows all the creditors to have a claim against the debtor and his assets, present or future. On the other hand, § 523 assumes that a general discharge of the debts is allowed, but some specified debts are exempted from discharge. Under § 523, specific debts are excluded from discharge because the debtor acted in ‘an improper manner at the time the he or she incurred the specific debt.’” *Id.* at 570 (citing *In re Billings*, 146 B.R. 431, 434 (Bankr. N.D. Ill. 1992)).

Under Bankruptcy Rules 4004, 4007, and 9006,<sup>1</sup> a complaint to deny the debtor’s discharge or to determine the dischargeability of a debt must be filed not later than 60 days after the meeting of creditors is held, and any motion for an extension of those deadlines must be filed before that time expires. Those Rules provide the bankruptcy court with no discretion to enlarge the time for filing a complaint under Rule 4004(a) when the movant fails to file the motion before the expiration of the bar date.<sup>2</sup>

Debtor correctly notes that Movant filed a motion to extend the time for filing an objection to Debtor’s discharge under Rule 4004 prior to the bar date. Unstated in Debtor’s argument is that

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<sup>1</sup> Bankruptcy Rule 9006 (b)(3) provides, “The court may enlarge the time for taking action under Rules. . .4004(a) [and] 4007(c) . . .only to the extent and under the conditions stated in those rules.

<sup>2</sup> See *Kontrick v. Ryan*, 124 S.Ct. 906 (U.S. 2004). In *Kontrick*, the Supreme Court held that Bankruptcy Rules 4004 and 9006 governing the time limit for filing objections to discharge (of all debts) do not concern court’s subject-matter jurisdiction. The court in *Kontrick* did note that one of the primary purposes of Bankruptcy Rules 4004 and 9006 is to “instruct the court on the limits of its discretion to grant motions for complaint-filing-time enlargements.”

Crisci failed to file a motion to extend the time for filing an objection to dischargeability of Crisci's claim against Debtor. Although Crisci may have intended to file a motion to extend the time for filing a complaint to determine the dischargeability of the debt owed by Barnett under Bankruptcy Rule 4007, Crisci in fact filed a motion to extend the time for filing an objection to Debtor's discharge under Bankruptcy Rule 4004. Therefore, this court cannot now consider any motion by Crisci to extend the time for filing a complaint to determine the dischargeability of the debt, as the bar date has passed.

With respect to the motion to extend time for filing an objection to Debtor's discharge, the facts asserted by Crisci do not set forth a claim for relief which would support a denial of Debtor's discharge. Therefore, granting the request to extend the time for filing an objection to the discharge is pointless. Accordingly, it is hereby

ORDERED that Crisci's Motion to Extend Deadline for Filing [a debt] Nondischargeability Complaint is denied.

IT IS SO ORDERED, this the \_\_\_\_ day of March, 2004.

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MARGARET H. MURPHY  
UNITED STATES BANKRUPTCY JUDGE